IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 312 of 1983

Date of Decision: 3.07.2007

Inderjit ..Appellant

Vs.

Daya Ram & Ors. ..Respondents

Coram: Hon'ble Mr. Justice Vinod K.Sharma

Present: Mr.Adarsh Jain, Advocate,
for the appellant.

None for the respondents.

Vinod K.Sharma,J.

Present regular second appeal has been filed against the judgments and decrees passed by the learned courts below vide which suit for possession filed by the plaintiff-appellant was ordered to be partly decreed and in appeal decree was modified.

The plaintiff-appellant had brought a suit through his next

friend Zile Singh against the defendants for possession of agricultural land by asserting that he is the son of Ram Sarup and said Ram Sarup sold away his agricultural land through registered sale deed to the defendants. The sale deed was said to be without consideration and without legal necessity. It was claimed that the plaintiff and Ram Sarup are Jat by caste and in the matter of alienation are governed by customs as prevalent in the old territory of Delhi. It was also claimed that the plaintiff is governed by Hindu Succession Act, 1956 and constituted a Hindu Joint family with his father Ram Sarup. The plaintiff claimed to have acquired interest by birth to the extent of half share in the suit land as mentioned in para No.3 of the plaint. It was claimed that after the sale as Ram Sarup was not heard at least for the last 7 years, therefore, he is presumed to have died and therefore, the plaintiff was entitled to maintain the present suit for possession of the suit land. In the alternative it was claimed that in case Ram Sarup is found to be alive then this may be treated as suit for declaration.

In the written statement filed by the defendants sale in question was admitted. However, the claim was disputed by asserting that the plaintiff was not son of Ram Sarup. The factum of land being ancestral was also denied. Defendants further claimed that the parties were not governed by the customs and it was claimed that Jats of the area have full power to alienate the ancestral property even without legal necessity. It was also claimed that Ram Sarup and the plaintiff did not constitute Hindu Joint Family. The assertion that the plaintiff was entitled to half share in the land

in suit was also denied. It was also denied that Ram Sarup was not heard for the last 7 years and it was claimed that the sale was for legal necessity and consideration. The ground of limitation was also taken. It was also claimed that sale was protected under section 41 of the Transfer of Property Act. He also claimed to have made improvement on the suit land. Pleas of misjoinder of causes of action and nonjoinder parties were also taken besides questioning the valuation of the suit.

In the replication the assertions made in the written statements were denied and that in the plaint were reiterated. On the pleadings of the parties two issues were framed by the trial court on 14.6.1966 which read as under:-

1. Whether the suit is not bad on account of mis-joinder of causes of action and mis-joinder of parties? OPP
2. Whether the suit has been properly valued for the p8rposes of court fee and jurisdiction? OPP

Though these two issues were treated as preliminary issues. However, issue No.1 was decided in favour of the plaintiff. Issue No.2 was also decided against the plaintiff. However, he was given an opportunity to make good the deficiency in the court fee which was accordingly done. Thereafter on 26.8.1977 on the pleading of the parties the following issues were framed:-

1. Whether the plaintiff is the son of vendor and has locus standi to file the suit? OPP

2. Whether Ram Sarup vendor should be presumed to be dead. If so, since when and to what effect? OPP
3. Whether the plaintiff and Ram Sarup are governed by custom in the matters of alienation of ancestral property, if so what that custom is? OPP
4. Whether the land in dispute was ancestral qua the plaintiff and Ram Sarup? OPP
5. Whether the plaintiff acquired an interest in the suit property by birth? If so, to what effect" OPP
6. Whether the impugned sales were for consideration & legal necessity? OPD
7. Whether the suit is not maintainable in the present form? OPD
8. Whether the suit is time barred? OPD
9. Whether the plaintiff has taken inconsistent pleas in the plaint. If so to what effect? OPD
10. Whether the defendant Ram Singh has carried out any improvement upon the suit land? If so to what effect and to what extent? OPD
11. Whether the sale is protected U/s 41 of the Transfer of Property Act? OPD

12.Relief.

Issue No.1 was decided in favour of the plaintiff-appellant and it was held that the plaintiff is son of vendor and therefore, had locus standi

to file the suit. Issue No.2 was also decided in favour of the plaintiff. However, on issue No.3 it was held that the plaintiff is not governed by customs and accordingly said issue was decided in favour of the defendants. On issue No.4 it was held that except the land referred in Rect No.51 which was self acquired property, the rest of the land was ancestral in the hands of Ram Sarup qua the plaintiff. On issue No.5 it was held that though the plaintiff acquired right by birth in the land in suit in the matter of succession but he was not entitled to be declared as owner of half share in the suit land though he could challenge the alienation of ancestral property in the hands of Ram Sarup qua the plaintiff as being without legal necessity or without consideration. On issue No.6 it was held that the sale deed was for consideration. On appreciation of evidence it was also held that Ram Sarup had no legal necessity at all. However, the sale deed Ex.P.12 was held to be for legal necessity. As issue No.7 was not pressed the same was decided in favour of the plaintiff and against the defendants. Issues No.8 and 9 were also decided in favour of the plaintiff. Issue No.10 was also decided in favour of the plaintiff. Issue No.11 was decided against the defendants and in favour of the plaintiff. Consequently, the suit was partly decreed and it was held that the plaintiff was entitled to possession of agricultural land described in para No.6-D, 6-F and 6-E suit qua remaining land was ordered to be dismissed.

Both the parties went in appeal against the judgment and decree passed by the learned trial court and learned lower appellate court dismissed the appeal filed by the plaintiff-appellant, whereas appeal filed by

the vendees was partly accepted and in appeal the decree was modified to the effect that the plaintiff was entitled to possession of the property to the extent of 3/8th share only qua land detailed in para No.6-D, 6-E and 6-F of the plaint which was sold by sale Deeds Ex.P.13, P.14 and P.15. Consequently, the suit of the plaintiff-appellant was ordered to be decreed for possession of 3/8th share in the aforesaid land.

Learned counsel appearing on behalf of the appellant raised the following substantial question of law in the appeal:-

1. Whether the judgment of the lower appellate court which is based on the proposition of law decided by the High Court is not liable to be set aside on the ground that the judgment of the High Court on which reliance was placed has been set aside. Therefore, the case is to be decided in terms of the judgment of Full Bench?

Learned counsel for the appellant in support of the substantial question of law as framed vehemently contended that the learned lower appellate court had modified the order passed by the learned trial court qua the part of the suit decreed by placing reliance on the judgment o this Court in the case of **Jawala Singh and another Vs. Lachman Dass and others AIR 1974 Punjab and Haryana 188** in which this Court was pleased to hold that when father acting as Karta of the joint Hindu Family alienates the joint property then the alienation will be binding on the undivided (half) share of father that is Karta. Reliance was also placed on

the judgment of this Court in the case of **Mohinder Singh and others Vs. Ishwar Singh and others 1979 All India Hindu Law Reporter 307.**

Learned counsel for the appellant submitted that the said judgment was overruled by the Full Bench of this Court in the case of **Manohar Lal and another Vs. Dewan Chand and another 1985 P.L.R. 689** and therefore, the findings recorded by the learned lower court cannot be sustained. The Full Bench of this court has been pleased to lay down as under:-

> "10. Held, that it has been admitted between the parties that in Punjab and Haryana, the Hindus are governed by Mitakshar School of Hindu Law Where a member of the Joint Hindu Family governed by Mitakshra Law sells or mortgages the Joint Hindu family property or any part thereof without the consent of the coparceners, the alienation is liable to be set aside wholly unless it was for legal necessity and it does not pass the share even of the alienating coparcener. A.I.R. 1974 Punjab and Haryana 188, LPA No.692 of 1973 decided on 31st January, 1977 overruled."

Thus, in view of the judgment of Hon'ble Full Bench the contention raised by the learned counsel for the appellant has force. The defendant-respondents have not challenged the findings recorded by the learned courts below vide which a concurrent finding of fact was recorded that self-acquired property and that ancestral property were distinct and separate property and therefore, it has to be held that the courts below were

right in holding that the sale qua the self-acquired property was valid whereas the sale qua ancestral property which was held to be without legal necessity could not be binding on the plaintiff. The judgment of this court in the case of **Inder Singh deceased and another vs.Channo AIR 2000 Punjab and Haryana 1** would also not have any application to the facts of the present case as it is only when self-acquired property is intermixed with the ancestral property to an extent and then it is difficult to find out as to which part is ancestral and which part is non-ancestral then it has to be held that whole of the property is self-acquired but in the present case by way of concurrent finding learned courts below have been pleased to hold that the land falling in Rect No.51 to be self-acquired property whereas other property is to be held as ancestral property in the hands vendor Ram Sarup.

In view of the judgment of Full Bench the substantial question of law as framed is answered in favour of appellant.

Consequently, this regular second appeal is allowed and the judgment and decree passed by the learned lower appellate court is set aside and that of the trial court is restored with no order as to costs.

July 3,2007 **(Vinod K.Sharma)**
rp **Judge**